

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 02-0050P
Adjusted Gross Income Tax
For Calendar Years 1997, 1998, and 1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is an insurance company. Although the taxpayer is not subject to gross income tax, it is liable for an apportioned amount of adjusted gross income tax because it has inventory in the state of Indiana.

Taxpayer filed a penalty protest letter dated December 18, 2001.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that it originally took a credit against the supplemental income tax for premium taxes paid. Upon audit, the credit was denied which resulted in tax due. Taxpayer states it was unaware that it could not take a credit against the supplemental income tax for premium taxes paid and it was always its intention to meet its tax-filing obligations. Accordingly, it requests a waiver of the penalty.

The taxpayer took a credit against supplemental income tax for premium taxes paid. Domestic insurance companies have the option of either paying premium tax or gross income tax. Regardless of which option they choose, they are subject to supplemental net income tax. There are provisions to reduce taxes by Guarantee Association credits as well as Indiana Comprehensive Health Insurance Association Credit, however, no provision exists to reduce taxes by premium tax paid. An adjustment to disallow this credit was made in accordance with

IC 6-3-8-2 (c). Taxpayer incorrectly calculated supplemental net income tax

45 IAC 15-11-2(b) states, “Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.